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One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102Telephone (314) 231-5400
Facsimile (314) 231-4342

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Kami L. Bechyne et al.
Serial No. 10/761,042
Filed January 20, 2004
Confirmation No. 1196
For INTERLABIAL PAD PACKAGING
Examiner David Fidei

Art Unit 3728

APPEAL BRIEF

Richard L. Bridge, Reg. No. 40,529
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

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APPEAL BRIEF

This is an appeal from the final rejection of the claims of the above-referenced application made in the Office action dated December 22, 2005. A Notice of Appeal was filed on March 16, 2006.

The Commissioner is hereby authorized to charge the fee for the appeal brief in the amount of \$500 to Deposit Account No. 19-1345. The Commissioner is also hereby authorized to charge any additional fees which may be required to Deposit Account No. 19-1345.

I. REAL PARTY IN INTEREST

The real party in interest in connection with the present appeal is Kimberly-Clark Worldwide, Inc. of 401 N. Lake Street, Neenah, Wisconsin 54957-0349, a corporation of the state of Delaware, owner of a 100 percent interest in the pending application.

II. RELATED APPEALS AND INTERFERENCES

An appeal has been filed in U.S. Patent Application Serial No. 10/760,877 entitled INTERLABIAL PAD PACKAGING. This application has common subject matter with the case at hand and Kimberly-Clark Worldwide, Inc. is owner of a 100 percent interest.

III. STATUS OF CLAIMS

Claims 1-5 are currently pending in the application. A copy of the claims involved in this appeal appears in the Claims Appendix of this Brief.

Claims 1-5 stand rejected. Claims 1-5 are rejected under 35 U.S.C. §103(a) as obvious in view of U.S. Patent No. 6,059,100 (Jones) in combination with U.S. Patent No. 6,115,997 (Barrow et al.).

The rejections of claims 1-5 are being appealed.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the mailing of the final Office action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

With reference to the present specification and drawings, in one aspect, the claimed subject matter is a package 47 of interlabial pads 1 for carrying a supply 19 of the pads in hygienic condition in such manner as to maintain them in hygienic condition and to be readily available for use in hygienic condition when needed. See page 5, paragraph [0030] and Figures 11 and 12. The package 47 comprises a receptacle 49 and a supply 19 of pads 1 in the receptacle. See page 7, paragraph [0033] and Figures 11 and 12. The receptacle 49 has an opening 61 through which a pad 1 may be withdrawn for use when needed. See page 6, paragraph [0032] and Figures 11 and

12. The receptacle 49 has a reclosable closure for closing the opening 61. See page 7, paragraph [0033] and Figures 11 and 12. The closure is closed for carrying the pads 1 in hygienic condition and for continued carrying in hygienic condition of the pads remaining in the receptacle 49 after withdrawal of a pad. See page 6, paragraph [0032] and Figures 11 and 12. The receptacle 49 comprises a bag having front and back walls 51, 53 joined at the sides 55, 57 and bottom 59 with the opening 61 at the top. See page 7, paragraph [0033] and Figures 11 and 12. The closure comprises press-fit members 63, 65 extending across the walls 51, 53 adjacent the opening 61. See page 7, paragraph [0033] and Figures 11 and 12.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Appellants appeal the rejections of claims 1-5 under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 6,059,100 (Jones) in view of U.S. Patent No. 6,115,997 (Barrow et al.).

VII. ARGUMENT

A. Claims 1-5 are submitted to be non-obvious and patentable over U.S. Patent No. 6,059,100 (Jones) in view of U.S. Patent No. 6,115,997 (Barrow et al.).

Claim 1

The subject matter of claim 1 is directed generally to a recloseable package for interlabial pads so that new, unused pads can be carried in purses, backpacks, briefcases, etc. in a hygienic environment until needed. Thus, the unused pads are prevented from becoming dirty and/or damaged. Further, the unused pads are maintained by the package in a common location which makes them easy to find when needed.

Particularly, claim 1 is directed to a package of interlabial pads for carrying a supply of the pads in hygienic condition in such manner as to maintain them in hygienic condition and to be readily available for use in hygienic condition when needed. The package comprises a receptacle and a supply of pads in the receptacle. The receptacle has an opening through which a pad may be withdrawn for use when needed, and a reclosable closure for closing the opening. The closure is closed for carrying the pads in hygienic condition and for continued carrying in hygienic condition of the pads remaining in the receptacle after withdrawal of a pad. The receptacle comprises a bag having front and back walls joined at the sides and bottom with the opening at the top. The closure comprises press-fit members extending across the walls adjacent the opening.

Claim 1 is submitted to be nonobvious in view of and patentable over U.S. Patent No. 6,059,100 (Jones) and U.S. Patent No. 6,115,997 (Burrow et al.) in that whether considered alone or in combination the references fail to teach or suggest a package having the recited combination of elements including a receptacle and a supply of pads in the receptacle in a hygienic condition.

Jones (as shown in Figs. 1-5 thereof) discloses a feminine hygiene product disposal system 10 comprising a main container 12 with an interior 14 and a sealable top 16. The sealable top 16 is formed by a locking track 38. A plurality of discrete disposal containers 20 are placed in the interior 14 of the main container 12. The plurality of disposal containers 20 includes a pair of outer disposal containers 21 and at least one interior disposal container 23 positioned between the outer disposal

containers. Each of the disposal containers 21, 23 are separable from adjacent containers.

Jones certainly lacks any disclosure or suggestion for a package that has a supply of interlabial pads in a receptacle in hygienic condition. Rather, Jones merely discloses a main container (12) of "disposal bags". There are no interlabial pads in the container (12), either before or after any one of the disposal bags (i.e., containers (20)) are used. In Jones, a single, disposable bag can be removed from the container and a single, used feminine product can be placed into the single disposable bag. There is no teaching or suggestion by Jones that the used pads are then placed into the main container (12), nor would there appear to be any room in the main container for the used pads. Accordingly, Jones fails to disclose a supply of pads in a receptacle in a hygienic condition as recited in claim 1.

Burrow et al. disclose in their description of the prior art that a single package can be used to package a new pad, saved, and then used to wrap the used pad for disposal. Specifically, Burrow et al. state at col. 1, ll. 23-30 (as relied on in the final Office action):

It is known to *individually package* disposable feminine hygiene articles, wherein a single cover sheet is wrapped around the article and sealed to itself optionally with a releasable tab provided with adhesive. Such packaging allows the user to open it by pulling on the tab, and to re-use the package by inserting a used version of the article inside the single cover sheet, wrapping it closed and re-sealing the tab. Emphasis added.

Nowhere do Burrow et al. teach or suggest storing a plurality of unused pads (or used pads for that matter) in a single package in a hygienic condition. Thus, Burrow et al. (like Jones) also fails to disclose a supply of pads in a receptacle as recited in claim 1.

One of the criteria for establishing a *prima facie* case of obviousness is that the prior art references must teach or suggest all the claimed features. M.P.E.P. §2143. Since Jones and Burrow et al. each individually fail to disclose or suggest a supply of pads in a receptacle in a hygienic condition, a combination of these references also fails to disclose or suggest such a feature. As a result, claim 1 is submitted to be non-obvious in view of and patentable over the combination of Jones and Burrow et al.

Moreover, it would not have been obvious to one of ordinary skill in the art to modify the system of Jones in view of the teaching of Burrow et al. as asserted in the final Office action, i.e., to provide a supply of interlabial pads in the main container (12) of Jones in a hygienic condition. In determining whether a case of *prima facie* obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification. Obviousness can only be established by modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references or in the knowledge generally available to one of ordinary skill in the art. M.P.E.P. §2143.01 citing *In re Kotzab*, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). The mere fact that a prior art reference may be modified to obtain the claimed invention does not make the claimed invention obvious if there is no suggestion or motivation in the reference to make the

modification. *In re Mills*, 916 F.2d 680, 682, 16 U.S.P.Q.2d 1430, 1432 (Fed. Cir. 1990). The prior art must provide one of ordinary skill the motivation to make the proposed modifications. *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1984).

Jones and Burrow et al. each teach placing a single feminine hygiene product in a single package. Specifically, Jones teaches disposable bags for placing individual used pads into an individual disposable bag. At no time is even one used pad, let alone multiple used pads, placed in the main container (12). Burrow et al. teach individually wrapped feminine hygiene articles wherein the wrapper must be saved after the article is removed, and following use the article is then placed back in the same wrapper. Accordingly, one of ordinary skill in the art would not have been motivated by the teachings of either Burrow et al. or Jones to modify the main container of Jones to provide a receptacle and a supply of interlabial pads therein in a hygienic condition. Rather, at most, one skilled in the art would be motivated to place an opened and empty wrapper of Burrow et al. (e.g., after the unused pad is removed from the wrapper) into the disposal bag container (12) of Jones until the wrapper is needed again to dispose of the used pad.

The final Office action takes the position (at page 4) that there is nothing in Jones that fails to suggest that merely modifying the receptacle 12 to include a supply of pads is beyond the purview of the disclosure of Jones. However, appellants submit that the motivation to modify a reference cannot come from the lack of disclosure by a cited reference, but rather there must be some express or inherent teaching or suggestion that would motivate one skilled in the art to make such a modification. Rather, the final Office action takes the position that it is implicit that women would carry a supply of

unused pads along with carrying the container (12) of disposal bags (20) of Jones. Whether or not such a characterization is implicit, there is still no suggestion or teaching that would motivate one to put the supply of unused pads in the container (12) of Jones. Indeed, there is no teaching by Jones that the container (12) is even large enough to do so. Rather, the container appears in the drawings of Jones to be sized only for holding the empty disposal bags (20).

As a result, appellants respectfully request the Board reverse the Office's rejection of claim 1.

Claims 2-5 depend directly or indirectly from claim 1 and are submitted to be patentable over the combination of Jones and Barrow et al. for the same reasons as claim 1.

Claim 5

Claim 5, which depends indirectly from claim 1, recites that the interlabial pads are individually packaged. Thus, the interlabial pads are packaged twice. Nowhere do either of these references teach or suggest packaging an article in two packages. As mentioned above, both Jones and Barrow et al. teach wrapping a single article in a single package. Accordingly, claim 5 is submitted to be further patentable over the combination of Jones and Barrow et al.

VIII. CONCLUSION

For the reasons stated above, appellants respectfully request that the Office's rejections be reversed and that claims 1-5 be allowed.



Richard L. Bridge, Reg. No. 40,529
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

RLB/PEB/bcw

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IX. CLAIMS APPENDIX

1. A package of interlabial pads for carrying a supply of the pads in hygienic condition in such manner as to maintain them in hygienic condition and to be readily available for use in hygienic condition when needed, said package comprising a receptacle, a supply of pads in the receptacle, said receptacle having an opening through which a pad may be withdrawn for use when needed, said receptacle having a reclosable closure for closing the opening, said closure being closed for carrying the pads in hygienic condition and for continued carrying in hygienic condition of the pads remaining in the receptacle after withdrawal of a pad, said receptacle comprising a bag having front and back walls joined at the sides and bottom with said opening at the top, said closure comprising press-fit members extending across the walls adjacent the opening.

2. A package as set forth in claim 1 wherein the bag comprises a blank folded to form said front and back walls, the fold constituting the bottom of the bag and the front and back walls being attached together at the sides thereof.

3. A package as set forth in claim 2 wherein the blank is at least partially opaque to conceal the packaged pads in the bag.

4. A package as set forth in claim 2 wherein the blank comprises a plastic film.

5. A package as set forth in claim 2 wherein the interlabial pads are individually packaged.

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X. EVIDENCE APPENDIX

None.

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XI. RELATED PROCEEDINGS APPENDIX

None.